89-704

Supreme Court, U.S.
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No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1989

JACOB J. KROZSER, Administrator of the Estate of Stephen F. Krozser,
Appellant,

v.

STATE OF CONNECTICUT,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF CONNECTICUT

JURISDICTIONAL STATEMENT

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October 27, 1989

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QUESTION PRESENTED

Whether the State of Connecticut may condition access to its courts in actions for money damages brought under 42 U.S.C. Section 1983 by requiring not only that plaintiffs in such cases exhaust administrative remedies under Chapter 53 of the Connecticut General Statutes, *Claims against the State*, but also by requiring that they do so successfully by obtaining the permission of Connecticut's Claims Commissioner to sue the State?

PARTIES

The appellant in this Court is JACOB J. KROZSER, Administrator of the Estate of Stephen F. Krozser, who in such capacity was the plaintiff below. The only appellee in this Court is STATE OF CONNECTICUT, a defendant and appellee below. As to other defendants below: action against the CITY OF NEW HAVEN was withdrawn prior to the judgment of the Supreme Court of Connecticut; action against RAYMOND M. LOPES, in his Official Capacity as Commissioner of Correction of the State of Connecticut, abated upon his departure from office, and no substitution was made of his successor in office.

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- STATE OF CONNECTICUT,
Appellee.

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JURISDICTIONAL STATEMENT

Jacob J. Krozser, Administrator of the Estate of Stephen F. Krozser, the appellant, appeals from the final judgment of the Supreme Court of Connecticut, dated August 1, 1989, holding that plaintiff must exhaust his administrative remedies prior to bringing an action under 42 U.S.C. Section 1983 in the Connecticut state courts.

OPINIONS BELOW

The opinion and judgment of the Supreme Court of Connecticut, which appears in the appendix hereto, p. 1A, *infra*, is reported at 212 Conn. 415, 562 A.2d 1080 (1989).

JURISDICTION

The judgment of the Supreme Court of Connecticut, affirming the dismissal of plaintiff's action for money damages under 42 U.S.C. Section 1983, upon motion to dismiss for sovereign immunity, for failing previously to successfully pursue and exhaust administrative remedies under Chapter 53 of the Connecticut General Statutes, was entered on August 1, 1989.

A supplementary Notice of Appeal to this Court, dated October 27, 1989, was timely filed in the Supreme Court of Connecticut on October 27, 1989. See p. 14A, *infra*.

This appeal is being docketed in this Court within 90 days from the entry of such judgment. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES

CONSTITUTION OF THE UNITED STATES

Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Eighth Amendment, United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONNECTICUT CONSTITUTION, 1965

Article Eleventh, Section 4

Sec. 4. Claims against the state shall be resolved in such manner as may be provided by law.

CHAPTER 53, CLAIMS AGAINST THE STATE

Sec. 4-142. Claims commissioner. Excepted claims. There shall be a claims commissioner who shall hear and determine all claims against the state except: . . .

* * *

Sec. 4-148. Limitation on presentation of claim. (a) No claim shall be presented under this chapter but within one year after it accrues. . . .

* * *

Sec. 4-160. Authorization of actions against the state. (a) When the claims commissioner deems it just and equitable, he may authorize suit against the state on any claim which, in his opinion, presents an issue of law or fact under which the state, were it a private person, could be liable. In each such action the claimant shall allege such authorization and the date on which it was granted. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances.

* * *

(d) Issues arising in such actions shall be tried to the court without a jury.

* * *

Sec. 4-165. Immunity of state officers and employees from personal liability. No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his duties or within the scope of his employment. Any person having a complaint for such damage or injury shall present it as a claim against the state under the provisions of this chapter. . . .

* * *

Sec. 4-165b. Claims against the state by inmates of state correctional and reformatory institutions. (a) On and after May 3, 1976, any inmate of any institution of the department of correction or the department of children and youth services who suffers an injury which results in a fatality or in a permanent handicap may file a claim against the state. Such claim shall be heard and decided in accordance with the provisions of this chapter.

CHAPTER 304c

ALCOHOL AND DRUG ABUSE

Sec. 17-155k. State policy re alcoholics and intoxicated persons. It is the policy of this state that alcoholics and intoxicated persons should not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

Sec. 17-155s. Regulations re treatment programs. Standards. Cooperation with commissioner of correction. Transfer of persons accused or convicted of nonviolent crimes.

* * *

(b) The commissioner of correction and the executive director of the commission on alcohol and drug abuse shall cooperate in establishing treatment and rehabilitation programs for alcoholics and drug-dependent persons confined in correctional institutions. Persons convicted of nonviolent crimes or confined in lieu of bond on nonviolent charges may be transferred . . . for treatment and rehabilitation upon agreement. . . .

CHAPTER 926

STATUTE OF LIMITATIONS

Sec. 52-577. Action founded upon a tort. No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.

* * *

Sec. 52-584. Limitation of action for injury to person or property. No action to recover damages for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct, or by malpractice of a physician, surgeon, dentist, podiatrist, chiropractor, hospital or sanatorium, shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, . . .

CHAPTER 925

STATUTORY RIGHTS OF ACTION AND DEFENSES

Sec. 52-555. Actions for injuries resulting in death. In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of.

CHAPTER 927

SURVIVAL OF ACTIONS

Sec. 52-599. Survival of actions and causes of actions. (a) A cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person.

HOW THE FEDERAL QUESTION WAS RAISED

At this trial level, this case was disposed of on the complaint and a motion to dismiss. (15A–18A, 19A–20A) The federal question was raised first by the following allegations of the complaint. The underlying Eighth Amendment claim is described in paragraphs 4 to 8, below; the federal question here pertinent, whether plaintiff was not required to pursue administrative remedies, was first raised by paragraph 9 of the complaint, below:

* * *

> 4. Plaintiff's decedent, STEPHEN F. KROZSER, was an alcoholic at all times pertinent herein. On or about June 8, 1985, he was taken into custody and was at that time suffering from *delirium tremens*. As a consequence of such conditions, he then and thereafter until his death had serious medical needs. . . .
>
> 5. Under Chapter 304c of the General Statutes of the State of Connecticut, it is the policy of the State that alcoholics should not be subject to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. It is further the duty of defendant Commissioner [of Correction] Lopes and the executive director of the Connectiocut Alcohol and Drug Abuse Commission to establish treatment and rehabilitation programs for alcoholics confined in correctional institutions.
>
> 6. In connection with the actions and omissions of defendants and their agents hereinafter alleged, said defendants and their agents were acting under color of state law. The actions and omissions of defendants hereinafter alleged constituted deliberate indifference to the serious medical needs of said STEPHEN F. KROZSER. . . .

7. During the period of the above alleged custody, said STEPHEN F. KROZSER was moved from place to place, was not duly placed under supervision, medication, observation, and monitoring, as called for by his medical condition and needs, and was introduced into the processes of the criminal justice system, with the proximate result that on the morning of June 12, 1985, he died unobserved and unmonitored under his bed on the floor at the New Haven Community Correctional Center. . . .

8. Plaintiff brings this action under the provisions of Sections 1983 and 1988 of Title 42 of the United States Code. . . .

9. Under Chapter 53 of the General Statutes of the State of Connecticut, an administrative officer and procedure is and has been established to allow for the authorization of actions against the State and to provide for the waiver of the State's defense of sovereign immunity in accordance with the provisions therein. Under Section 1983 and 1988 of Title 42 of the United States Code, plaintiff need not exhaust such administrative remedies and is entitled to commence this action directly for this Court's determination in accordance with the provisions of said Chapter 53 that the State may be sued and its immunity waived.

These allegations anticipated the holding in *Felder v. Casey*, 487 U.S. ____, 101 L.Ed.2d 123, 108 S.Ct. 2302 (1988) that the rule against requiring exhaustion of administrative remedies in actions under 42 U.S.C. Section 1983 in federal courts earlier stated in *Patsy v. Board of Regents of Florida*, 457 U.S. 496 (1982), applies also to state court actions by virtue of the Supremacy Clause.

The Supreme Court of Connecticut characterized plaintiff's claims as follows: Plaintiff ". . . first contends that a complainant need not exhaust his 'administrative remedies'

prior to bringing a Section 1983 action in the state court. He next claims that the state trial court may 'borrow' applicable state law, pursuant to 42 U.S.C. Section 1988, to supplement federal law. In this regard, the plaintiff argues that the Superior Court may 'borrow' and apply General Statutes Section 4-160(a), which sets forth the standards to be used by the claims commissioner, to determine whether to authorize suit against the state. Finally, the plaintiff contends that chapter 53 of the General Statutes[9] 'discriminates' against the assertion of his decedent's federal rights under 42 U.S.C. Section 1983. We are unpersuaded." 212 Conn., at 419–420; pp. 5A–6A, below. (Footnote omitted.)

We emphasize here that we file this Statement not simply because of a mistake below under *Felder* and *Patsy* affecting this case only, but, as discussed below, because this is only one instance of a pervasive condition affecting all state court litigation for money damages under 42 U.S.C. Section 1983 in Connecticut.

It is also important to note that Sections 4-160(a), (d) and 4-165 of Chapter 53 of the Connecticut General Statutes establish the state as the designated defendant in respect of claims for damage or injury by a state officer or employee, immunize such officer and employee for "damage or injury, not wanton, reckless or malicious, caused in the discharge of his duties or within the scope of his employment," and require administrative authorization as a condition upon such suit, p. 4, *supra*.

STATEMENT OF THE CASE

The action below was dismissed on grounds of sovereign immunity on a motion to dismiss. The development of the factual and legal basis of the underlying Eighth Amendment claim for deliberate indifference to serious medical needs of an incarcerated person did not get beyond the allegations of the complaint.

Appellant's decedent, Stephen F. Krozser ("Krozser"), was an alcoholic suffering from *delirium tremens* when taken into state custody June 8, 1985. As a proximate result of deliberate indifference to his serious medical needs, Krozser died while still incarcerated on June 12, 1985. This occurred despite Connecticut's statutory policy to treat and cure alcoholics if non-violent, rather than punish them by incarceration, and despite the mandate that Connecticut's commissioner of corrections and the executive director of its commission on alcohol and drug abuse are to cooperate to establish treatment and rehabilitation programs for alcoholics confined in correctional institutions. Sections 17-155k, 17-155s(b), quoted at page 5, above. The statutory policy and duties, as well as the principles of *Estelle v. Gamble*, 429 U.S. 97 (1976), establish a Section 1983 claim here under the complaint's allegations that, because of the positive state duties, is not subject to the limitations effected by *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. ____, 103 L.Ed.2d 249, 109 S.Ct. 998 (1989).

The issue here, however, is not the validity of the Eighth Amendment claim under Section 1983 but rather the questions: What conditions may the state place on prosecuting that claim for money damages in the state's courts, and whether the state can require not only exhaustion but the successful exhaustion of an administrative remedy?

Plainly, the Connecticut Supreme Court views such successful exhaustion as necessary. In *Barde v. Board of Trustees*

of Regional Community Colleges, 207 Conn. 59, 66, 539 A.2d 1000 (1988), that Court said:

> With respect to the monetary claim for a salary increase, the plaintiff admittedly failed to present his claim to the commissioner of claims. General Statutes Section 4-141, 4-142; . . . ." . . . The failure of the plaintiffs to pursue this administrative remedy precludes an adjudication of the constitutional claim they have raised . . . . No determination of whether a constitutional necessity exists that would supersede the state's sovereign immunity can be made when the alternative procedure available through the claims commissioner, which might have provided the relief sought, has been ignored . . . ." *Doe v. Heintz, supra*, [204 Conn. 17, 526 A.2d 1318 (1987)], 37. "[B]ecause exhaustion of such an alternative means of relief is a prerequisite to our jurisdiction to consider [the] constitutional claim;" *id.*, 34; we conclude that the trial court lacked jurisdiction and, therefore, properly granted the motion to dismiss.

It is important at this point to consider the principles applied by the Connecticut Supreme Court in extending the protection of sovereign immunity to individual state actors against whom suit is brought in their individual capacities under Section 1983. In that respect, the Connecticut Supreme Court has stated:

> ". . . We have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state . . . ." *Sentner v. Board of Trustees of Regional Community Colleges*, 184 Conn. 339, 342, 439 A.2d 1033 (1981).

Consequently, virtually any suit against a state employee, agent, or official, whether in the officer's individual or official

capacity, meets the defense of sovereign immunity, and, under the expansive definition of a suit against the state, as quoted, it is in practical effect always futile to seek money damages from a state employee, agent, or official, quite apart from the question of the financial responsibility of the official indemnified. See, for example, *Fetterman v. University of Connecticut*, 192 Conn. 539, 473 A.2d 1176 (1984) (state university's vice president, assistant vice president, and dean of agriculture, held immune from liability under Section 1983 for terminating tenured professor's salary and terminating accrual of retirement benefits without a hearing).

In some cases involving injunctive, or declaratory, or certain constitutional relief not precisely in the form of money damages, Connecticut permits a direct suit. See, *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977) (granting relief to remedy statewide disparities in tax financing of school districts); *Textron, Inc. v. Wood*, 167 Conn. 334, 355 A.2d 307 (1974) (awarding just compensation under taking clauses in respect of condemnation); such cases have no relevance here.

Therefore, it would be illusory for appellee to argue that this is a condition only upon suit against the state, the administrative procedure leading to which, if successful, puts the state in the position of the defendant, not an individual state actor whose financial responsibility may be doubtful but who would be the typical defendant in an action under Section 1983. Such an argument by appellee would be illusory because the cloak of sovereign immunity spread over the individual state actor is so broad under Connecticut Supreme Court decisions as to make it futile to seek a money remedy in state court against a state actor, individually.

As acknowledged in the opinion below (pp. 4A–5A), appellant did file a claim with the State Claims Commissioner seeking permission to sue the state within the limit of the one-year claim period. Section 4-148, Conn. Gen. Stat., quoted at p. 4, above. The action below was commenced, however, without the claims commissioner having acted on the claim,

when the two-year period prescribed by Connecticut's wrongful death statute (Section 52-555, Conn. Gen. Stat., quoted at p. 6, above) approached its end. It is clear under *Robertson v. Wegmann*, 436 U.S. 584 (1978), that that two-year period, applicable to all wrongful death actions in Connecticut and incorporated in the Connecticut wrongful death statute, would govern.

Thus, chapter 53 of the General Statutes does not form part of a framework of state law in which the state actor may be effectively sued in his or her individual capacity (subject to questions of individual financial responsibility which the Section 1983 litigant faces in any event) for damages for constitutional deprivations under Section 1983; rather, in the context of the Connecticut case law giving the broadest protection of "sovereign immunity" to individual defendants in such actions, the administrative procedure prescribed in chapter 53 is the *only* effective route to recovery of money damages in an action under Section 1983 in the state courts there. If Connecticut courts are to be used, the Section 1983 litigant is for all practical purposes forced to follow chapter 53's administrative procedure. All other doors to Connecticut courts are closed.

This, however, is directly contrary to the several principles enunciated in *Felder v. Casey*, 487 U.S. ____, 101 L.Ed.2d 123, 144, 108 S.Ct. 2302, 2312 (1988), reiterating the statements in *Burnett v. Grattan*, 468 U.S. 42, 50, 55 (1984), that the central objectives of such actions, affording compensatory damages or injunctive relief, should not be permitted to be diluted or adulterated in the state forum, that such cases belong in court, and that the rights that such cases are intended to vindicate are judicially enforceable in the first instance.

Chapter 53 of the Connecticut General Statutes, Claims against the State, provides in Section 4-160(a) that, "When the claims commissioner deems it just and equitable, he may authorize suit against the state on any claim which, in his opinion, presents an issue of law or fact under which the state,

were it a private person, could be liable . . . ." p. 4, *supra*. To enforce those requirements as the opinions below would do would be squarely repugnant to the principles just stated from the foregoing authorities under the Supremacy Clause as interpreted in those authorities.

In determining whether such application of the state statutory requirement would discriminate against the federal rights in question, the Court below misapplies the parallel drawn in *Felder*, 101 L.Ed.2d, at 143, n.3, 108 S.Ct., at 2310, n.3. There, the parallel applied to determine whether the federal right was the subject of discrimination under a state statute or regulation was to measure the comparable private, analogous tort with a view to whether rights in respect of such tort were more easily or efficiently enforceable in the state court, not whether the federal, constitutional tort could be equally asserted in federal court.

Egregious custodial malpractice of the type actionable under the Eighth Amendment and Section 1983, if committed in respect of a prisoner's medical needs, is a tort with a private or common-law analogue. An alcoholic in the care and custody of a private sanatorium or a resident of a private institution who suffers from senile feeblemindedness would have a similar claim if serious medical needs were deliberately ignored. (For a governmental claim without a private analogue, see, for example, *Akutowicz v. United States*, 859 F.2d 1122, 1125–26 (2d Cir. 1988).) Either of such private hypothetical claimants, or a representative, would have immediate access to Connecticut courts with no exhaustion or other additional requirements; consequently, the federal right is the object of discrimination as applied in *Felder*. Beyond that, not only must the claim against the state be filed within the shorter, one-year period, the claimant must succeed in getting the claims commissioner's permission to sue and may not seek a jury trial.

Thus, as to the main principles of *Felder* and *Patsy*, the Court below is clearly not only in error but in error in a fashion that erects a serious obstacle to the pursuit of claims for money damages in the Connecticut state courts under 42 U.S.C. Section 1983 throughout the State.

THE QUESTION IS SUBSTANTIAL

We submit that a most significant consideration in the evaluation of the issue here advanced is that the vice of the situation below, in litigating such claims in Connecticut, is that the situation strongly works to perpetuate itself: the combination of the broad cloak of sovereign immunity extended to individual state actors under the case law evidenced by the quote at page 11, above, and the ruling of the Court in the opinion below, throttles precisely that litigation which would otherwise tend to correct the vice. With such strong battlements erected against money recoveries in state court litigation of these claims, most will attempt to vindicate the claim in federal court, thus stifling the accurate presentation to this Court of the real obstacles below and tending to make an appeal such as this appear to be no more than an isolated occurrence.

The issue of itself raises strong principles of federalism which, if not reviewed, will allow the continued distortion of their vindication in Connecticut, whether in state or federal court.

Beyond the question of crowded federal dockets, under *Felder*, and with good reason, the state courts should be as available and efficient as the federal courts for the litigation of such claims, and two aspects of such litigation would make the state courts preferable if their doors were genuinely open. In claims of this type involving state agents, employees, or officials, the presence of the Eleventh Amendment tends to make federal court litigation awkward and stilted. And with state statutes, regulations, institutions, and actors involved, the use of state courts in such litigation, if genuinely available, would provide a forum more familiar with those legal and factual aspects of the claims particularly related to state activities.

Finally, following the important basic precepts set out in *Felder*, it would be highly advantageous, both in Connecticut and throughout the United States, to show the further elucidation of those precepts by interstitial application in the particular circumstances here.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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October 27, 1989

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APPENDIX

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a strong disincentive for state disclosure of exculpatory or impeachment evidence. Such a disincentive is inconsistent with the fair trial guarantee that underlies *Brady*, and inconsistent with the prosecutor's role as "the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." Id., 675; *Berger* v. *United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935).

Accordingly, I respectfully dissent.

JACOB J. KROZSER, ADMINISTRATOR (ESTATE OF STEPHEN T. KROZSER) *v.* CITY OF NEW HAVEN ET AL. (13589)

SHEA, CALLAHAN, GLASS, COVELLO and HULL, Js.

The plaintiff administrator sought damages from the defendants, the city of New Haven, the state of Connecticut and the commissioner of correction, for the allegedly wrongful death of his decedent. The state and the commissioner of transportation moved to dismiss claiming that the suit was barred by the doctrine of sovereign immunity. The trial court granted the motion and rendered judgment in favor of the state and the commissioner, and the action against the city was withdrawn. The plaintiff appealed claiming, inter alia, that because the action was brought pursuant to the federal civil rights act (42 U.S.C. §§ 1983 and 1988) the trial court had the authority to waive sovereign immunity. *Held* that the trial court did not err in dismissing the action; by statute (§ 4-160 [a]), only the claims commissioner can waive sovereign immunity, § 1983 does not abrogate the common law doctrine of sovereign immunity, § 1988 does not authorize the trial court to "borrow" § 4-160 (a) so as to allow it to determine that the state may be sued and, contrary to the claim of the plaintiff, § 4-160 (a) does not discriminate against the assertion of federal rights.

Argued May 11—decision released August 1, 1989

Action to recover damages for the wrongful death of the plaintiff's decedent, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Flanagan, J.*, granted the

motion to dismiss filed by the defendant state of Connecticut et al. and rendered judgment thereon; thereafter, the action was withdrawn against the named defendant, and the plaintiff appealed. *No error.*

Louis M. Winer, for the appellant (plaintiff).

Richard T. Couture, assistant attorney general, with whom, on the brief, were *Clarine Nardi Riddle*, acting attorney general, and *Joseph I. Lieberman*, former attorney general, for the appellees (defendant state of Connecticut et al.).

CALLAHAN, J. The issue presented in this appeal is whether the trial court erred in dismissing the plaintiff's complaint for money damages against the state of Connecticut and the commissioner of correction because the suit was barred by the doctrine of sovereign immunity.[1] The plaintiff contends that in this cause of action brought pursuant to 42 U.S.C. § 1983,[2] the Superior Court had the authority to waive sovereign immunity and to allow an action to proceed against the state even though the claims commissioner had not authorized the suit pursuant to General Statutes § 4-160 (a).[3] We disagree.

[1] Initially, the city of New Haven was named as a defendant. The suit against the city was subsequently withdrawn.

[2] "[42 U.S.C.] § 1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[3] General Statutes (Rev. to 1985) § 4-160 (a) provides in pertinent part: "AUTHORIZATION OF ACTIONS AGAINST THE STATE. (a) When the claims commissioner deems it just and equitable, he may authorize suit against the state on any claim which, in his opinion, presents an issue of law or fact

The plaintiff, Jacob J. Krozser, administrator of the estate of Stephen F. Krozser, filed a complaint in the Superior Court seeking damages, pursuant to 42 U.S.C. §§ 1983 and 1988,[4] against the state of Connecticut and Raymond Lopes, in his official capacity as the commissioner of correction. The defendants moved to dismiss, claiming that sovereign immunity barred the plaintiff's action. The trial court granted the defendants' motion concluding that (1) the doctrine of sovereign immunity barred the complainant's claim against the state, and (2) the state is not a "person" within the meaning of 42 U.S.C. § 1983.[5] The plaintiff appealed to the Appel-

under which the state, were it a private person, could be liable. In each such action the claimant shall allege such authorization and the date on which it was granted. The state waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the state in each such action shall be coextensive with and shall equal the rights and liability of private persons in like circumstances. . . ."

[4] "[42 U.S.C.] § 1988. PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS; ATTORNEY'S FEES

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title 'CIVIL RIGHTS,' and of Title 'CRIMES,' for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extented to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

[5] The plaintiff did not contest the trial court's ruling that the state is not a person within the meaning of 42 U.S.C. § 1983. Since we affirmed the

late Court. Thereafter, we transferred the appeal to ourselves pursuant to Practice Book § 4023. We find no error.

On June 12, 1985, Stephen F. Krozser died while incarcerated at the New Haven Community Correctional Center. On June 10, 1986, pursuant to General Statutes §§ 4-147 and 4-165b,[6] the plaintiff filed a notice of claim with the claims commissioner seeking permission to sue the state of Connecticut. In his notice of

trial court's ruling based upon the first ground, we did not address that issue. However, on June 15, 1989, the United States Supreme Court in *Will* v. *Michigan Department of State Police*, U.S. (57 U.S.L.W. 4677, June 13, 1989), ruled that a state or state official while acting in his official capacity is not a "person" within the meaning of § 1983.

[6] "[General Statutes] Sec. 4-147. NOTICE OF CLAIM. FILING FEES. Any person wishing to present a claim against the state shall file with the clerk of the office of the claims commissioner a notice of claim, in duplicate, containing the following information: (1) The name and address of the claimant; the name and address of his principal, if the claimant is acting in a representative capacity, and the name and address of his attorney, if the claimant is so represented; (2) a concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of; (3) a statement of the amount requested, and (4) a request for permission to sue the state, if such permission is sought. A notice of claim, if sent by mail, shall be deemed to have been filed with the office of the claims commissioner on the date such notice of claim is postmarked. Claims in excess of one thousand dollars shall be accompanied by a check or money order in the sum of twenty-five dollars payable to the treasurer, state of Connecticut. Claims for one thousand dollars or less shall be accompanied by a check or money order in the sum of ten dollars payable to the treasurer, state of Connecticut. Fees may be waived by the commissioner for good cause but such action by the commissioner shall not relieve the claimant from the obligation of filing his notice of claim in timely fashion within the statute of limitations under section 4-148. The clerk of the office of the claims commissioner shall promptly deliver a copy of the notice of claim to the attorney general. Such notice shall be for informational purposes only and shall not be subject to any formal or technical requirements, except as may be necessary for clarity of presentation and facility of understanding."

"[General Statutes] Sec. 4-165b. CLAIMS AGAINST THE STATE BY INMATES OF STATE CORRECTIONAL AND REFORMATORY INSTITUTIONS. (a) On and after May 3, 1976, any inmate of any institution of the department of correction or the department of children and youth services who suffers an injury which

claim and his subsequent complaint to the Superior Court, the plaintiff alleged that while the plaintiff's decedent was incarcerated at the correctional center the defendants were deliberately indifferent to, and failed to provide for, his serious medical needs. The plaintiff further alleged that the defendants' conduct was a violation of his decedent's rights under the eighth and fourteenth amendments to the United States constitution and directly resulted in his decedent's death.

For reasons that are not clear from the record, the claims commissioner never acted upon the plaintiff's request to sue the state.[7] Consequently, the plaintiff filed the instant action in the Superior Court, apparently because the two year statute of limitations for wrongful death, embodied in General Statutes § 52-555, was about to expire.[8]

On appeal, the plaintiff asserts that the trial court had the authority to waive the state's sovereign immunity in a § 1983 suit for money damages and therefore it erred when it dismissed his action. The plaintiff's argument is three-pronged. He first contends that a complainant need not exhaust his "administrative remedies" prior to bringing a § 1983 action in the state

results in a fatality or in a permanent handicap may file a claim against the state. Such claim shall be heard and decided in accordance with the provisions of this chapter.

"(b) All matters pending before the committee established pursuant to section 18-95 of the general statutes, revision of 1958, revised to 1975, on May 3, 1976, shall be construed as pending with the same status with the claims commissioner on said date."

[7] The plaintiff blames the death of the claims commissioner and the resultant delays for the lack of activity on his claim. The state claims that the plaintiff's allegation is "misleading in that it fails to disclose that the plaintiff has yet to comply with discovery requests filed by the defendants in March, 1987."

[8] At oral argument, the question was posed from the bench whether the plaintiff would be barred by the statute of limitations from asserting his 42 U.S.C. § 1983 claim against the state. Neither party briefed the issue. Accordingly, we will not decide it at this time.

court. He next claims that the state trial court may "borrow" applicable state law, pursuant to 42 U.S.C. § 1988, to supplement federal law. In this regard, the plaintiff argues that the Superior Court may "borrow" and apply General Statutes § 4-160 (a), which sets forth the standard to be used by the claims commissioner, to determine whether to authorize suit against the state. Finally, the plaintiff contends that chapter 53 of the General Statutes[9] "discriminates" against the assertion of his decedent's federal rights under 42 U.S.C. § 1983. We are unpersuaded.

" 'We have long recognized the common-law principle that the state cannot be sued without its consent. *Horton* v. *Meskill*, 172 Conn. 615, 623, 376 A.2d 359 (1977); *Textron, Inc.* v. *Wood*, 167 Conn. 334, 339, 355 A.2d 307 (1974). We have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. *Horton* v. *Meskill*, supra; *Textron, Inc.* v. *Wood*, supra; *Baker* v. *Ives*, 162 Conn. 295, 297, 294 A.2d 290 (1972); *Murphy* v. *Ives*, 151 Conn. 259, 262, 196 A.2d 596 (1963); *Anderson* v. *Argraves*, 146 Conn. 316, 320, 150 A.2d 295 (1959). Therefore, we have dealt with such suits as if they were solely against the state and have referred to the state as the defendant. *Anselmo* v. *Cox*, 135 Conn. 78, 79–80, 60 A.2d 767, cert. denied, 335 U.S. 859, 69 S. Ct. 132, 93 L. Ed. 405 (1948); *Rusch* v. *Cox*, 130 Conn. 26, 34, 31 A.2d 457 (1943).' (Footnote omitted.) *Sentner* v. *Board of Trustees*, 184 Conn. 339, 342–43 [439 A.2d 1033 (1981)]." *Fetterman* v. *University of Connecticut*, 192 Conn. 539, 550–51, 473 A.2d 1176 (1984).

The absolute bar of actions against the state on the ground of sovereign immunity has been modified by

[9] Chapter 53 includes General Statutes §§ 4-141 through 4-165b.

statute and by judicial decisions. "Sovereign immunity does not bar suits against state officials acting in excess of their statutory authority or pursuant to an unconstitutional statute. *Horton* v. *Meskill*, [supra, 624]." *Doe* v. *Heintz*, 204 Conn. 17, 31, 526 A.2d 1318 (1987). In addition, the state cannot use sovereign immunity as a defense in an action for declaratory or injunctive relief. Id. However, "[i]n the absence of legislative authority . . . we have declined to permit any monetary award against the state or its officials. *Fetterman* v. *University of Connecticut*, [supra, 550]; *State* v. *Chapman*, 176 Conn. 362, 365, 407 A.2d 987 (1978)." Id., 32. Further, " '[s]tatutes in derogation of sovereignty should be strictly construed in favor of the state, so that its sovereignty may be upheld and not narrowed or destroyed.' *Berger, Lehman Associates, Inc.* v. *State*, 178 Conn. 352, 356, 422 A.2d 268 (1979), quoting *Spring* v. *Constantino*, 168 Conn. 563, 570, 362 A.2d 871 (1975)." *Duguay* v. *Hopkins*, 191 Conn. 222, 232, 464 A.2d 45 (1983).

When sovereign immunity has not been waived, the claims commissioner is authorized by statute to hear monetary claims against the state and determine whether the claimant has a cognizable claim. See General Statutes §§ 4-141 through 4-165b. The claims commissioner, if he deems it "just and equitable," may sanction suit against the state on any claim "which, in his opinion, presents an issue of law or fact under which the state, were it a private person, could be liable." General Statutes § 4-160 (a). "This legislation expressly bars suits upon claims cognizable by the claims commissioner except as he may authorize, an indication of the legislative determination to preserve sovereign immunity as a defense to monetary claims against the state not sanctioned by the commissioner or other statutory provisions. General Statutes §§ 4-148 (b), 4-160." *Doe* v. *Heintz*, supra, 35–36.

The plaintiff is unable to point to any statute that waives the state's sovereign immunity in the present case. In addition, the plaintiff concedes that he has never received permission from the claims commissioner to sue the state. He argues, however, that under *Patsy* v. *Florida Board of Regents*, 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172 (1982), he is not required to obtain the consent of the claims commissioner prior to bringing his § 1983 claim in the Superior Court. In *Patsy*, the United States Supreme Court held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." Id., 516. Consequently, the plaintiff contends he need not obtain permission prior to proceeding against the state in a § 1983 action. We disagree.

Section 1983 does not abrogate the common law doctrine of sovereign immunity. "In *Owen* v. *Independence*, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673, reh. denied, 446 U.S. 993, 100 S. Ct. 2979, 64 L. Ed. 2d 850 (1980), the United States Supreme Court stated that '[w]here the immunity claimed by the defendant was well established at common law at the time Section 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act, we have construed the statute to incorporate that immunity.' Id., 638. The doctrine of sovereign immunity was well established at common law at the time § 1983 was enacted. It is supported by a strong policy reason; that is, to prevent the imposition of enormous fiscal burdens on states. As concluded by the court in *Quern* v. *Jordan*, 440 U.S. 332, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979), Congress did not intend 'by the general language of Section 1983 to override the traditional sovereign immunity of the States.' Id., 341." *Fetterman* v. *University of Connecticut*, supra, 551–52.

The plaintiff, however, contends that the trial court and the claims commissioner have concurrent jurisdiction to authorize suits against the state and therefore he should not be required to first exhaust what he denotes as his "administrative remedy" under chapter 53 of the General Statutes prior to commencing suit. We disagree. Before a claimant may pursue any monetary claim against the state, if the doctrine of sovereign immunity is applicable, the state must consent to be sued. *Pennhurst State School & Hospital* v. *Halderman*, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984); *Fetterman* v. *University of Connecticut*, supra, 550. The claims commissioner, as previously noted, may waive that immunity, pursuant to General Statutes § 4-160 (a), and consent to suit. Until that happens, however, the Superior Court has no jurisdiction to hear any such monetary claim. " 'A statute giving a right to costs in general terms will not be construed to include an award against the State, because the State is invested with the immunities from legal process, mesne and final, which at common law belonged to the King and there would be no power in the court to enforce its decree.' [*State* v. *Chapman*, supra, 365]; *State* v. *Anderson*, 82 Conn. 392, 393–94, 73 A. 751 (1909). '[I]t is a general principle that what courts cannot enforce they cannot decree.' *State* v. *Anderson*, supra, 393; see *Pellegrino* v. *O'Neill*, 193 Conn. 670, 683, 480 A.2d 476, cert. denied, 469 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984)." *Doe* v. *Heintz*, supra, 32–33. "The question whether the principles of governmental immunity from suit and liability are waived is a matter for legislative, not judicial, determination. *Rogan* v. *Board of Trustees*, 178 Conn. 579, 582, 424 A.2d 274 (1979); *Bergner* v. *State*, 144 Conn. 282, 286–87, 130 A.2d 293 (1957)." *Duguay* v. *Hopkins*, supra, 228.

In keeping with that premise, the entire legislative scheme of chapter 53, which authorizes claims against the state, makes clear that it is the claims commissioner, pursuant to legislation, that can waive sovereign immunity and not the courts. The legislation pertinent to this appeal expressly provides that, "[w]hen the claims commissioner deems it just and equitable, he may authorize suit against the state"; General Statutes § 4-160 (a); and that when "any inmate of any institution of the department of correction" brings a claim against the state for an injury which results in a fatality, that claim must be heard and decided in accordance with the provisions of chapter 53. General Statutes § 4-165b. The Superior Court, therefore, has no authority to hear a claim for monetary damages against the state when the doctrine of sovereign immunity is applicable.[10] That jurisdiction, in the first instance, resides by statute solely in the claims commissioner.

The plaintiff maintains, however, that 42 U.S.C. § 1988 confers jurisdiction on the Superior Court to waive the state's sovereign immunity and allow it to be sued. Specifically, the plaintiff contends that § 1988 authorizes the trial court to "borrow" General Statutes § 4-160 (a) to determine whether his claim presents an issue under which the state, were it a private person, could be liable. The plaintiff claims that by thus

[10] Moreover, this reading of the statute is consistent with our interpretation of chapter 53 in *Circle Lanes of Fairfield, Inc.* v. *Fay*, 195 Conn. 534, 489 A.2d 363 (1985). In *Circle Lanes of Fairfield, Inc.*, we concluded that the Superior Court lacked jurisdiction to hear appeals from the claims commissioner because General Statutes § 4-164a expressly exempted the claims commissioner from the operation of General Statutes § 4-183, the provision of the Uniform Administrative Procedure Act that permits an appeal to the Superior Court. Further, when the commissioner recommends payment of a claim against the state in excess of $7500, it is the legislature, not the court, that reviews the commissioner's decision. See General Statutes § 4-159.

allowing the trial court to authorize suit against the state we would be fostering the "goal of compensation" underlying § 1983. We disagree.

Section 1988 "recognizes that in certain areas 'federal law is unsuited or insufficient "to furnish suitable remedies" '; federal law simply does not 'cover every issue that may arise in the context of a federal civil rights action.' *Moor* v. *County of Alameda*, 411 U.S. 693, 703 [93 S. Ct. 1785, 36 L. Ed. 2d 596] (1973) [reh. denied, 412 U.S. 963, 93 S. Ct. 2999, 37 L. Ed. 2d 1012 (1973), overruled on other grounds, *Monell* v. *New York City Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)], quoting 42 U.S.C. § 1988." *Robertson* v. *Wegmann*, 436 U.S. 584, 588, 98 S. Ct. 1991, 56 L. Ed. 2d 554 (1978). "The century-old Civil Rights Acts do not contain every rule of decision required to adjudicate claims asserted under them." *Burnett* v. *Grattan*, 468 U.S. 42, 47, 104 S. Ct. 2924, 82 L. Ed. 2d 36 (1984). Federal courts under § 1988 may therefore look to state law to fill the void. Id., 48; *Robertson* v. *Wegmann*, supra.

"Most decisions concerning the borrowing of state law . . . have arisen from [a] need to borrow provisions, such as statutes of limitations, tolling policies, and survival rules, that serve the exclusive purpose of defining that point where the right to maintain a cause of action ends." *Brown* v. *United States*, 742 F.2d 1498, 1505 (D.C. Cir. 1984), cert. denied sub nom. *District of Columbia* v. *Brown*, 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509 (1985). Section 1988 "instructs federal courts as to what law to apply in causes of actions arising under federal civil rights acts. But . . . the section, without more, was [not] meant to authorize the wholesale importation into federal law of state causes of action—not even one purportedly designed for the protection of federal civil rights." *Moor* v. *County of Alameda*, supra, 703–704. Section 1988 applies only

when federal law is inapplicable or in some way deficient. *Brown* v. *United States,* supra, 1504. The fact that the plaintiff cannot, without consent, sue the state in an action under § 1983 for money damages is not, however, simply a matter of a deficiency in federal law. Sovereign immunity is a matter of substantive state law that has been consistently recognized as not having been abrogated by § 1983. See discussion, supra.

Next, the plaintiff claims that chapter 53 discriminates against the assertion of his federal rights. In support of his argument, the plaintiff relies primarily on the recent United States Supreme Court case of *Felder* v. *Casey,* U.S. , 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988). *Felder* is inapposite. The state notice-of-claim statute struck down in *Felder* produced "different outcomes in § 1983 litigation based solely on whether the claim [was] asserted in state or federal court . . . . " Id., 2307. *Felder* involved a claim under § 1983 against the city of Milwaukee and its police officers. The notice-of-claim statute in question in that case imposed restrictions on a claimant which raised a § 1983 cause of action against a municipality and its officers in the state court, but did not apply to such claims if brought by the claimant in the federal court. Id., 2309. Consequently, the statute made it more difficult for the claimant to sue under § 1983 in the state court. The present case poses no such problem. As the plaintiff conceded at oral argument, the eleventh amendment would be a complete bar to his cause of action in the federal court.[11] *Pennhurst State School*

[11] The eleventh amendment to the United States constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

We note that in *Patsy* v. *Florida Board of Regents,* 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172 (1982), the United States Supreme Court did not address whether the eleventh amendment would nevertheless bar

& Hospital v. *Halderman,* supra, 98; *Fitts* v. *McGhee,* 172 U.S. 516, 524, 19 S. Ct. 269, 43 L. Ed. 535 (1899); *Hans* v. *Louisiana,* 134 U.S. 1, 10 S. Ct. 504, 33 L. Ed. 842 (1890). Likewise, the doctrine of sovereign immunity would bar the plaintiff's cause of action in the state court. The plaintiff, therefore, is treated equally in both jurisdictions, avoiding the problem addressed by the United States Supreme Court in *Felder* v. *Casey,* supra.

There is no error.

In this opinion the other justices concurred.

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the suit on the basis of the sovereign immunity of the state. "Nothing in this opinion precludes the Board of Regents from raising its Eleventh Amendment claim on remand." Id., 515–16 n.19.

IN THE SUPREME COURT OF THE
STATE OF CONNECTICUT

JACOB J. KROZSER, Administrator
of the Estate of Stephen F. Krozser,
Appellant,

v. No. 13589

STATE OF CONNECTICUT,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that JACOB J. KROZSER, Administrator of the Estate of Stephen F. Krozser, the appellant above-named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of Connecticut, affirming the dismissal of the complaint, entered in this action on August 1, 1989.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

CHIEF CLERK
SUPREME COURT
APPELLATE COURT
Oct 27 9:22 AM '89
DRAWER Z, STATION A
HARTFORD, CT 06106
(Seal)

/s/ Louis Marshall Winer
Louis Marshall Winer
2911 Dixwell Avenue
P.O. Box 5619
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(203) 281-3142
— *Counsel for Appellant* —

Dated: October 27, 1989.

CERTIFICATE OF SERVICE

I, Louis Marshall Winer, a member of the bar of this Court and a member of the bar of the Supreme Court of the United States, hereby certify that on this 27th day of October, 1989, three true copies of the above Notice of Appeal were deposited in the United States Mails, first-class postage prepaid, addressed to counsel for all parties to the proceedings below, namely three copies addressed to: Clarine Nardi Riddle, Esquire, Attorney General of the State of Connecticut, 30 Trinity Street, Hartford, Connecticut 06106, and to Richard T. Couture, Esquire, Assistant Attorney General, MacKenzie Hall, 110 Sherman Street, Hartford, Connecticut 06105, counsel for appellee State of Connecticut and for Raymond

M. Lopes, in his Official Capacity as Commissioner of Correction of the State of Connecticut, a defendant below; and to Brian Murphy, Esquire, Corporation Counsel of the City of New Haven, and Carolyn R. Spencer, Assistant Corporation Counsel, 95 Orange Street, New Haven, Connecticut 06510, counsel for the City of New Haven, said City having been a defendant below. I further certify that all parties required to be served have been served.

/s/ Louis Marshall Winer
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— Counsel for Appellant —

Return Date: July 14, 1987

JACOB J. KROZSER, Administrator of the Estate of Stephen F. Krozser,	: SUPERIOR COURT
Plaintiff,	:
vs.	:
THE CITY OF NEW HAVEN, STATE OF CONNECTICUT, and RAYMOND M. LOPES, in his Official Capacity as Commissioner of Correction of the State of Connecticut,	: JUDICIAL DISTRICT : OF NEW HAVEN : AT NEW HAVEN
Defendants.	: JUNE 9, 1987

COMPLAINT

1. Prior to his death on June 12, 1985, at the New Haven Community Correctional Center, located on Whalley Avenue in the City of New Haven, STEPHEN F. KROZSER was a resident of the Town of Beacon Falls. JACOB J. KROZSER, a resident of the City and Town of Bridgeport, was duly appointed and serves as the Administrator of the Estate of Stephen F. Krozser, and brings this action in such capacity as plaintiff.

2. THE CITY OF NEW HAVEN is a municipality organized and existing under the laws of the State of Connecticut. Said municipality and the STATE OF CONNECTICUT are subject to the constitution and laws of the United States and the State of Connecticut as pertinent and applicable to the causes herein alleged. Defendant THE CITY OF NEW HAVEN, is also subject to its own City Code and City Charter.

3. RAYMOND M. LOPES is a defendant in this action in his official capacity as Commissioner of Correction of the State of Connecticut. At all pertinent times, defendant LOPES served as such Commissioner with the powers, duties, and responsibilities, provided under Chapter 325 of the General Statutes of the State of Connecticut.

4. Plaintiff's decedent, STEPHEN F. KROZSER, was an alcoholic at all times pertinent herein. On or about June 8, 1985, he was taken into custody and was at that time suffering from *delirium tremens*. As a consequence of such conditions, he then and thereafter until his death had serious medical needs. During the period from June 8, 1985, until his death he was held in the custody of either or both of: the Department of Police Services of THE CITY OF NEW HAVEN at its lock-up or elsewhere; and the Department of Correction of the STATE OF CONNECTICUT at the New Haven Community Correctional Center. For brief periods during that time, said STEPHEN F. KROZSER was held in custody in transit, in court for arraignment, or at the emergency room of Yale-New Haven Hospital.

5. Under Chapter 304c of the General Statutes of the State of Connecticut, it is the policy of the State that alcoholics should not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. It is further the duty of defendant Commissioner Lopes and the executive director of the Connecticut Alcohol and Drug Abuse Commission to establish treatment and rehabilitation programs for alcoholics confined in correctional institutions.

6. In connection with the actions and omissions of defendants and their agents hereinafter alleged, said defendants and their agents were acting under color of state law. The

actions and omissions of defendants hereinafter alleged constituted deliberate indifference to the serious medical needs of said STEPHEN F. KROZSER and, as such, violated the provisions of, and constituted an infringement of the rights and immunities of said STEPHEN F. KROZSER established under, the Eighth and Fourteenth Amendments to the United States Constitution.

7. During the period of the above alleged custody, said STEPHEN F. KROZSER was moved from place to place, was not duly placed under supervision, medication, observation, and monitoring, as called for by his medical condition and needs, and was introduced into the processes of the criminal justice system with the proximate result that on the morning of June 12, 1985, he died unobserved and unmonitored under his bed on the floor at the New Haven Community Correctional Center. The actions and omissions of defendants leading to such consequence were a result of an implicit policy, participated in by all defendants and for which all defendants are responsible and liable, of deliberate indifference to the serious medical needs of alcoholics and persons suffering from *delirium tremens* and of failing reasonably to monitor and require compliance with reasonable, effective standards of care and custody for such persons. As a proximate result of said actions, omissions, and policies, plaintiff's decedent suffered the loss of his life, the loss of life's employment, loss of earnings and earning capacity, and the pain and distress suffered from the knowledge that he was about to die from the lack of due care to which he was subjected.

8. Plaintiff brings this action under the provisions of Sections 1983 and 1988 of Title 42 of the United States Code. Under those statutes and under the Civil Rights Acts, generally, of the United States Code, this Court has jurisdiction concurrent with the jurisdiction of the courts of the United States in connection with the claims and causes herein alleged.

9. Under Chapter 53 of the General Statutes of the State of Connecticut, an administrative officer and procedure is and has been established to allow for the authorization of actions against the State and to provide for the waiver of the State's

defense of sovereign immunity in accordance with the provisions therein. Under Sections 1983 and 1988 of Title 42 of the United States Code, plaintiff need not exhaust such administrative remedies and is entitled to commence this action directly for this Court's determination in accordance with the provisions of said Chapter 53 that the State may be sued and its immunity waived.

10. To the extent that any defendant herein claims that he or it is entitled to avail himself or itself of the defense of sovereign immunity, the recognition of such claim or defense violates and infringes upon the rights of plaintiff under the Equal Protection Clauses of the constitutions of the United States and of the State of Connecticut, in the light of the fact that the State has by statute waived such defense in connection with persons in the custody of or under the supervision of the Commissioner of Health Services or the Commissioner of Mental Retardation, and there is no rational or supportable distinction between or among the conditions or illnesses subject to the jurisdiction of said Commissioners and the condition of alcoholism or *delirium tremens* which should be cognizable under the jurisdiction of the Commissioner or */sic/* Mental Health.

WHEREFORE plaintiff demands judgment for damages, exemplary damages, attorney's fees, and such equitable relief by way of injunction as may be appropriate in the premises.

PLAINTIFF JACOB J. KROZSER,
Administrator of the Estate
of STEPHEN F. KROZSER

By WINER & SULZBACH

By /s/ Louis M. Winer
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— His Attorneys —

NO. CV 87 0260094

JACOB J. KROZSER, Administrator	:	SUPERIOR COURT
Plaintiff,	:	
V.	:	JUDICIAL DISTRICT
	:	OF NEW HAVEN
CITY OF NEW HAVEN, ET AL	:	AT NEW HAVEN
Defendants.	:	AUGUST 10, 1987

MOTION TO DISMISS

The defendants, State of Connecticut and Commissioner Raymond M. Lopes, hereby move the Court, pursuant to Section 143 of the Connecticut Practice Book, to dismiss the complaint for the following reasons:

1. In that this is an action for money damages against the State of Connecticut and the Commissioner of Correction in his official capacity, the action is barred by the doctrine of sovereign immunity.

2. The State is not a "person" within the meaning of 42 U.S.C. § 1983.

ORAL ARGUMENT *NOT* REQUESTED
TESTIMONY *NOT* REQUIRED

RESPECTFULLY SUBMITTED,
DEFENDANTS
STATE OF CONNECTICUT AND
COMMISSIONER RAYMOND M. LOPES

BY: JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

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